THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11886 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the action of the 1st respondent-State Bank of India, in issuing tender notice dated 12.5.2006 for sale of the property bearing Door No.9/10, situated in Sy.No.45, Kagithalagudem village of Hazarathgudem Gram Panchayat, Cumbum Mandal, Prakasam district, is arbitrary and illegal.

A perusal of the impugned notice shows that the same was issued under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, for realization of the outstanding dues of a sum of Rs.4,62,081/- together with further interest from M/s Venkata Gayatri Oil Rotary & Flour Mill, represented by its proprietor – Vitta Venkata Subbaiah.

It is not in dispute that the said Vitta Venkata Subbaiah, who is impleaded as the 2nd respondent in this writ petition, is the father of the writ petitioner. It is stated that the 2nd respondent being the manager of the joint family having invested the income out of the joint family properties, acquired several properties, including the property sought to be sold under the impugned notice. The petitioner along with his brother-Vitta Venkateswarlu, filed O.S.No.61 of 2005 on the file of the Court of the Senior Civil Judge, Ongole, against their father (2nd respondent herein) for partition of the joint family properties. After coming to know that the 2nd respondent had mortgaged the house property to the 1st respondent-bank, the 1st respondent herein, was also impleaded as a defendant to the said partition suit, which is still pending. While so, the 1st respondent issued the impugned tender notice proposing to sell the property in question. The said action is challenged in this writ petition, contending that since the property in question is the subject matter of the suit for partition, the 1st respondent is not entitled to bring the same to sale.

As noted above, the impugned sale notice was issued under the provisions of the

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"). Admittedly, the property in question, which was mortgaged in favour of the 1st respondent-bank, is a secured asset within the meaning of Section 2(1) (zc) of the Act. Under Section 13 of the Act, the secured creditor is entitled to enforce such security interest without the intervention of the Court or the Tribunal, of course, following the procedure prescribed under the Act and the rules made thereunder. It is not the case of the petitioner that the 2nd respondent-borrower had no opportunity to raise objections. Neither there is any pleading nor any material to show that the impugned sale notice was issued in violation of any of the provisions of the Act.

In the circumstances, on the face of it, the writ petition appears to be collusive to defeat the rights of the 1st respondent-bank. At any rate, Section 17 of the Act enables any person aggrieved by any of the measures referred to in sub-section (4) of Section 13, to make an application to the Debt Recovery Tribunal having jurisdiction in the matter. If the petitioner is aggrieved, it is open to him to make such an application.

For the aforesaid reasons, interference by this Court is not warranted. The writ petition is accordingly, dismissed. No costs.

However, this shall not preclude the petitioner to work out the alternative remedy provided under the Act, if he so chooses.

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(G. ROHINI, J.)

19th June, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11886 OF 2006

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19th June, 2006.

Between:

Vitta Satyanarayana. .. Petitioner.

And

The State Bank of India, Cumbum Branch,

Prakasham district, represented by its

Authorised Officer and another. .. Respondents.